



Montana Legislative Services Division

Office of Research and Policy Analysis

March 13, 2009

TO: Chairman Dennis Himmelberger and
Members of the House State Administration Committee

FROM: Sheri Heffelfinger, Legislative Research Analyst

RE: Information Request No. 2850: Background information and briefing on
current law governing pay and bonuses in state government

This memorandum responds to the House State Administration Committee's request for background information and a staff briefing on current law governing pay and bonuses and state government. The context for this information request is that the House State Administration Committee recently tabled three bills aimed at addressing concerns about the payment of bonuses by statewide elected officials and the subsequent committee vote to request a study resolution (LC 2325) on pay and bonuses in state government. The tabled bills were HB 358 (Bergren), HB 576 (Warburton), and HB 594 (Hunter).

This memorandum will cover:

- a general overview of classification and pay principles;
- Montana's current law and policies and the changes proposed by HB 358, HB 576, and HB 594;
- a review of bonus information compiled by the Legislative Audit Division in response to legislator information requests; and
- discussion questions for drafting the Committee's study resolution, LC 2325.

Overview of classification and pay principles

State employees are grouped into two broad categories: (1) classified, and (2) exempt. For the purposes of this briefing paper and the Committee subsequent discussion, it is important to note that the term "exempt" does not mean "exempt" under the Fair Labor Standards Act that governs over-time and other types of pay, but to the group of positions and employees who are exempt from the state's general classification and pay plan discussed in further detail below.

Purpose of a classification and pay plan

Pay for state employees who are not exempt is determined according to what is called a classification and pay plan. The general purpose of any classification and pay plan is to promote a fair, equitable, and effective means of attracting and maintaining a competent and responsible work force. To achieve this objective in state government, state human resource specialists are concerned about:

- internal equity (e.g., fairness between positions within the same agency of state government);
- external equity (e.g., fairness between state government positions and similar positions in other states or in the private sector, which affects the ability of the state to compete in the labor market to attract and retain qualified and competent employees); and
- efficiency (e.g., providing compensation within budget).

Job classification

The first step toward achieving internal and external equity is job classification. There are various methods for classifying positions, but each is a means of grouping occupations into categories based on an analysis of job factors based on the required knowledge, skills, and abilities required to perform certain job tasks. Jobs requiring similar levels of education, skill, and ability, are grouped together into the same classification group. For example, licensing technicians, information technology specialists, and library technicians may be in one classification group, attorneys, engineers, and nurses may be grouped into another classification group, and secretaries, office assistants, and other types of support staff may be grouped into another classification group.

Market comparison

The next step is to assign pay ranges for each classification group (i.e., an entry-level salary up to a maximum salary for the classification). This involves a market comparison, usually through a salary survey, to determine what other employers pay their employees in similar occupations and classification groups. A pay range is then assigned to each classification group.

Pay administration tools

To maintain internal and external equity and to promote and encourage good performance, employers use various pay administration tools to adjust pay ranges and to move employee salaries through the establish pay ranges. These tools may include, for example:

- market-based pay adjustments to keep pay ranges competitive in the labor market;
- cost of living adjustments;
- performance-based pay, such as merit increases or bonuses; and
- longevity allowances to reward experience.

Budget constraints

In the finally analysis, however, plan objectives must all be accomplished within agency budget allocations.

Exempt employees

It is not uncommon for certain positions in state government to be exempted from the general classification and pay plan because it is generally recognized that certain positions warrant special consideration when it comes to pay determination. Exempt positions often include elected officials, personal staff, and certain executive officer positions that do not fit within a typical classification grouping or employees who serve at the pleasure of an appointing authority.

Montana's current law

Pay plan 20 - the broadband pay plan

Montana's laws on classification and pay are codified in Title 2, chapter 18, of the Montana Code Annotated (MCA). For all classified state government positions, the statutes establish what is called a "broadband classification plan" and a "broadband pay plan", which is also known as Pay Plan 20. The broadband classification and pay plan was enacted in 2007 to replace what was then called an open range market-based pay plan for general government employees. It also replaced the blue collar pay schedule for certain blue collar jobs, and the teachers' pay schedule for teachers employed by the state.

By statute, the broadband pay plan consists of nine pay bands. Each pay band must contain an entry, market, and maximum salary for each occupation within each pay band, which is also known as an "occupational pay range". The department of administration sets the pay bands and salary ranges for all classified employees within state government.¹

State agencies develop their own rules for administering the pay plan within their agencies. The Manager's Guide to Implementing Broadband Pay Plan Rules in Montana State Government states the following about the nature of the broadband pay plan:

The state's broadband pay plan is not a market, competency, or performance pay plan. It's an enterprise-wide plan that allows state agencies the flexibility to develop their own pay plan rules using any combination of market, competencies, or performance with broad statutory and policy parameters and authorized funding levels. The system allows state agencies to strategically link their own pay rules to their unique missions and more quickly adapt pay practices to changing demographics and labor markets.²

Although the plan authorizes flexibility agency by agency, statute also requires that all positions subject to classification must be classified using the same job-related standards and that agencies must use the same centrally-established market rates for the job classes within each pay band.³

In implementing the broadband classification and pay plan, state agencies take the following steps:

- Step 1: Define a pay philosophy
- Step 2: Classify jobs
- Step 3: Determine the competitive pay zone for each occupation
- Step 4: Identify methods for pay placement and progression
- Step 5: Measure success

Step 4 is where bonus payments come into play. Under Step 4, managers decide how to (1) set base pay, and (2) provide variable pay or "results pay".

¹ See section 2-18-301(6) through (8), MCA.

² Department of Administration, "The Manager's Guide to Implementing Broadband Pay Plan Rules in Montana State Government", State of Montana, October 2008, p. 1.

³ See sections 2-18-201 and 2-18-301, MCA.

The manager's guide offers managers the following six methods that may be used to provide base pay adjustments for their employees:

- market pay;
- competency pay;
- performance pay;
- career ladders;
- strategic pay; and
- situational pay.

Variable pay is pay that does not go into the employee's base salary, but is "at risk" or "one-time" and that are provided based on an employee or group of employees achieving certain results. Variable pay options available to state agency managers include:

- lump-sum performance bonuses or awards; and
- goal sharing programs that provide an incentive to reach a certain goal so that when the goal is achieved, a predetermined bonus or award amount is paid.

Bonuses

According to the Broadband Pay Plan Policy 3-05-01 as of October 1, 2007, the following types of wage adjustments may be given either as base pay adjustments or as bonuses:

- competency pay;
- performance pay;
- results pay;
- situational pay; and
- strategic pay.

Pay plan bill

When the legislature passes a pay plan bill, the language in section 2-18-303, MCA, which governs procedures for administering the broadband pay plan, is amended. For example, in 2007, the pay plan bill provided for a 3% increase in base salaries on October 1 of each year of the biennium and allocated to each agency 6/10 of 1% of salaries for "reasons including but not

limited to market progression, job performance, or employee competencies."⁴ In House Bill No. 13, which is the pay plan for this session, the language providing for those pay increases is stricken. Because no pay increases are being funded, that language is not replaced. Therefore, state employee pay is essentially frozen.

Exempt employee pay

Two statutes, sections 2-18-103 and 2-18-104, MCA, identify the positions in state government that are exempt from parts 1 through 3 and 10, of Title 2, chapter 18. Part 1 includes all the general provisions; part 2 includes provisions related to classification; part 3 covers compensation determination and the broadband pay plan; and part 10 covers grievance procedures. Thus, pay for these exempt positions is determined either by a statutory formula or by the appointing official or commission and not according to the broadband classification and pay plan.

The following are some examples of how exempt employee pay is handled under current law:

- pay for legislators is set in section 5-2-302, MCA, which sets a pay rate "commensurate to that of the daily rate for an employee earning \$10.33 an hour"; and legislative leaders receive an additional \$5 a day in salary;
- pay for statewide elected officials and judicial officials is set by statute based on a salary survey of surrounding states;
- salaries for department directors appointed by the governor are set by the governor;
- the salary for the Chief Public Defender is set by the Public Defender Commission;
- the salaries of personal staff, such as for the secretary of state, governor, and other statewide elected officials, are set by the appointing official; and
- the Legislative Council hires the Executive Director of the Legislative Services Division and sets the salary for that position.

⁴ See Section 2-18-303(2), MCA.

Judicial branch and legislative branch employees are also exempt. However, statute requires the court administrator to administer a judicial branch personnel plan; and the Legislative Council is required in section 2-18-201(2) to "implement and maintain a broadband classification plan for employees of the legislative branch" in "like manner" to the broadband plan for general government employees.

When the legislature passes a state employee pay plan, the appropriation amounts included in the bill for exempt positions are based on the assumption that exempt employees will receive the same pay increases as provided for classified employees under Pay Plan 20. However, there is nothing in statute that requires the same pay increases be given.

Employee incentive program

Current statute, Title 2, chapter 18, part 11, also provides for what is called the employee incentive program. Under this program a state employee of any branch of government, including the University System, is eligible for "an incentive award for innovations" that improve government efficiency and result in a measurable cost savings. An employee or group of employees are awarded a lump-sum payment based on a percentage of the amount of money actually saved for a period of 12 months following implementation of the innovative measure.⁵ These payments are bonus payments, but are not in the same category as bonuses paid for actual job performance or competency level.

The bonus bills: HB 358, HB 576, and HB 594

Each of the bonus bills (which are attached) heard in the House State Administration Committee this session offered different amendments to MCA sections related to the payment of bonuses.

HB 358 (*Bergren*) This bill was aimed at prohibiting statewide elected officials from paying bonuses or other special compensation to their exempt personal staff between the date of the general election immediately preceding the expiration of the official's term of office and the date that the official's term expires. The bill amended section 2-18-601, MCA, which was interpreted by the Department of Administration legal counsel to already prohibit the type of bonuses that were to have been paid by the Secretary

⁵ See Section 2-8-1106, MCA.

of State because they were, in effect, termination pay that was not authorized under 2-18-621(2)(b).

HB 576 (*Warburton*) This bill was aimed at restricting bonuses, and any other monetary payments, to exempt employees of statewide elected officials other than the pay increases authorized for classified employees under Pay Plan 20 (the broadband pay plan) during the calendar year in which the official is seeking election or reelection. However, as noted with respect to the broadband pay plan, bonuses can be part of that pay plan.

HB 594 (*Hunter*) This bill was aimed at restricting the amount of a bonus payment to any state officer or classified employee during any fiscal year. The bill would also have covered employees exempt under section 2-18-103, MCA, but would not have covered the personal staff of elected officials who are exempt under 2-18-104, MCA.

As the House State Administration Committee is aware, concerns about how each of the bills works mechanically and questions about whether the bills would actually accomplish what the sponsors wanted to accomplish resulted in Committee to action to table the bills and ultimately request the drafting of an interim study resolution, LC 2325.

Information requests to the Legislative Audit Division

In response to several legislative information requests, the Legislative Audit Division compiled information about bonus payments to exempt and classified employees in state agencies. This information is on file and available on request. The following is a brief summary of the information compiled in response to the requests.

One or more payments coded in the state payroll system as bonuses⁶ were paid to employees in the following offices or agencies during the 2008 calendar year:

- ▶ the Governor's Office;
- ▶ the Secretary of State's Office;
- ▶ the State Auditor's Office;
- ▶ the Department of Justice;

⁶ Please note that a bonus is a lump-sum payment of any kind that does not increase the employee's base salary.

- ▶ the Crime Control Division;
- ▶ the Commissioner of Higher Education;
- ▶ the Montana Tech;
- ▶ the Department of Fish, Wildlife, and Parks;
- ▶ the Department of Transportation;
- ▶ the Department of Livestock;
- ▶ the Department of Natural Resources and Conservation;
- ▶ the Department of Administration;
- ▶ the Montana State Fund;
- ▶ the Teachers' Retirement System;
- ▶ the Office of State Public Defender;
- ▶ the Department of Corrections;
- ▶ the Department of Commerce; and
- ▶ the Department of Public Health and Human Services.

In the State Auditor's Office, 6 bonus payments were paid to exempt personal staff and totaled \$18,000. The bonuses ranged from \$500 to \$10,000. Sixty-four bonus payments were made to classified staff and totaled \$132,000 with bonus amounts ranging from \$500 to \$14,000.

In the Governor's Office, one bonus totaling \$3,000 was paid to a classified staff person.

In the Secretary of State's Office, 9 bonuses were paid to classified employees. The bonuses totaled \$11,388 and ranged from \$238 to \$2,000. Nine bonuses to exempt personal staff were never paid and would have totaled \$58,434 with individual bonuses ranging from \$3,502 to \$8,755.

In the Department of Justice, 31 bonus were paid, but the data reported did not show whether the bonuses were paid to classified or exempt employees. The bonus payments totaled \$41,625 and ranged from \$150 to \$5,000.

In the Office of Public Instruction, three bonuses were paid, all were under the employee incentive program and ranged from \$200 or 16 hours of paid leave to \$500 or one week of paid leave.

A memorandum from the Legislative Audit Division dated February 18, 2009, is attached and explains the bonuses paid to employees of the Montana State Fund.

Discussion items for the study resolution LC2325

A study resolution consists of three parts:

- "whereas" clauses expressing the rationale for the study resolution;
- instructions about what should be studied and what goals should be accomplished (the instructions typically ask for an examination of certain topics, collection and analysis of information, and consideration of options; instruction may also involve requests for cooperation from certain stakeholders or agencies, for example the Department of Administration, agency personnel divisions, the Legislative Fiscal Division, and state employee unions.
- basic "boiler plate" language on when the study should be completed (i.e., by September 15) and what should be included in the report to the legislature (i.e., findings and recommendations, including any proposed legislation).

For the "whereas" clauses, the Committee could provide conceptual instructions to staff about what facts or statements of rationale to include in the resolution.

- Does the Committee want to mention the three bills on bonus payments?
- Are there concerns about bonuses that go beyond concern about state officials giving bonuses to personal staff at the ends of their terms? If so, what are those concerns?

The study instructions should reflect the Committee's primary policy questions.

- Should the study focus on exempt positions or extend to classified employees and the broadband pay plan? Or, does the Committee want a general study to identify problems and recommend solutions to any problems identified?
- What data and information does the Committee expect to have gathered and examined?

In summary

State employee compensation involves how jobs are classified or exempted, how pay ranges are set, how employees are moved through their pay ranges, and how performance should be recognized, all within available funding. The goal is to recruit and retain a qualified and competent work force.

The state's broadband pay plan was enacted in 2007 and represents a relatively new approach designed to allow flexibility to each agency in recruiting and retaining qualified employees. Irrespective of the design of the classification and pay plan for general state government employees, it is typical for certain positions to be exempt from the general classification and pay plan in order to accommodate special circumstances.

A bonus is a pay plan administration tool that is a one-time lump-sum compensation that does change the employee's base salary. There are many types of bonuses ranging from merit-based bonuses, to situational pay, to incentive awards. Classified and exempt employees may receive bonuses.

The Committee's study resolution could focus on particular concerns related to bonuses paid by statewide elected officials, be a little broader and examine bonuses paid for all exempt positions, be broadened to look at bonuses paid in all of state government, or be broaden even more to include compensation issues beyond just bonus payments.

Hopefully this research memorandum has been responsive to the Committee's information request and provided helpful information to facilitate the Committee's discussion.

ATTACHMENT A

RELEVANT MCA SECTIONS

2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;
- (21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender.

2-18-104. Exemption for personal staff -- limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from parts 1 through 3 and 10.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department.

Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10.

2-18-201. Implementation and maintenance of broadband classification plan. (1) The department shall implement and maintain a broadband classification plan for all state positions in state service except those exempt in 2-18-103 and 2-18-104.

(2) The legislative council shall in a like manner implement and maintain a broadband classification plan for employees of the legislative branch, other than those of the office of consumer counsel.

2-18-202. Guidelines for classification. (1) In providing for the broadband classification plan, the department shall group all positions in state service into defined occupations based on similarity of work performed, responsibilities assumed, difficulty of work, required knowledge, and required skills.

(2) Similar pay may be provided to individuals with the same occupation within an occupational pay range.

2-18-301. Purpose and intent of part -- rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based on an analysis of the labor market as provided by the department in a biennial salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature.

(4) Pay provided for in 2-18-303 may not be increased through collective bargaining after adjournment of the legislature.

(5) Total funds required to implement the pay increases provided for in 2-18-303 for any

employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary. The department shall adopt an entry salary, market salary, and maximum salary for each occupation within each pay band. These salary ranges are also known as occupational pay ranges.

(8) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish pay band levels; and

(c) set occupational pay ranges for all occupations.

(9) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(10) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system.

2-18-303. Procedures for administering broadband pay plan. (1) (a) On the first day of the first complete pay period in fiscal year 2008, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2007.

(b) Effective on the first day of the first complete pay period that includes October 1, 2007, the base salary of each employee must be increased by 3%. Effective on the first day of the first complete pay period that includes October 1, 2008, the base salary of each employee must be increased by 3%.

(2) (a) Effective October 1, 2007, and October 1, 2008, the appropriation that represents 6/10 of 1% of the salary for each full-time equivalent position must be allocated to each agency to distribute to its employees for reasons including but not limited to market progression, job performance, or employee competencies.

(b) To the extent that this distribution applies to employees within a collective bargaining unit, the distribution is a negotiable subject under Title 39, chapter 31. The amount of money allocated to agencies and available to distribute to members of each bargaining unit must be determined by multiplying the salaries of the total number of full-time equivalents in the bargaining unit by 6/10 of 1%.

(c) The allocation described in subsection (2)(b) may not be distributed to members of a collective bargaining unit until the employer's collective bargaining representative receives

written notice that the employee's collective bargaining unit has ratified a pay addendum to the collective bargaining agreement specifying the distribution.

(3) An employee's base salary may be no less than the pay band entry salary for the employee's assigned occupation.

(4) (a) (i) A member of a bargaining unit may not receive the pay increase provided for in subsection (1)(b) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the broadband pay plan.

(6) (a) Montana highway patrol officer base salaries and biennial salary increases must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session.

2-18-621. Unlawful termination -- unlawful payments. (1) It is unlawful for an

employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.

(2) (a) An employee who terminates employment is entitled to receive only:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law.

2-18-1106. Agency head to grant award -- amount and source of award. (1) An agency head may grant an incentive award to an employee, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency, as enumerated in 2-18-1105. An employee or a member of a group or team of employees need not be employed by the agency that benefits from the achievement or outcome and whose agency head grants the award in order to be granted an award.

(2) If agency management determines that an idea, innovation, or prototype that has been implemented will result in cost savings or improvements to agency operations, the agency head, at the agency head's discretion, may grant an incentive award of up to \$500, up to 40 hours paid leave time, or other nonmonetary recognition.

(3) If an achievement or outcome produces cost savings that can be measured after the savings are actually realized or that can be accurately projected for a period of 12 months following implementation, a larger award may be granted by the agency head. The amount of the award must be determined by the agency head but may not exceed:

(a) 10% of the first \$100,000 of cost savings actually realized or accurately projected;
plus

(b) 5% of the next \$100,000 of cost savings actually realized or accurately projected;
plus

(c) 2% of the next \$100,000 of cost savings actually realized or accurately projected.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined. The agency head shall pay the award from the agency's budget. This award is in addition to the recipient's regular compensation or leave time.

(5) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award.

HOUSE BILL NO. 358
INTRODUCED BY B. BERGREN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A STATEWIDE ELECTED OFFICIAL FROM PAYING PERSONAL STAFF BONUSES OR OTHER SPECIAL COMPENSATION WITHIN A CERTAIN TIME PERIOD BEFORE THE EXPIRATION OF THE OFFICIAL'S TERM; AMENDING SECTION 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination -- unlawful payments. (1) (a) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.

(b) It is unlawful for a statewide elected official to pay the official's personal staff, as defined in 2-18-101, any type of bonus, termination pay, performance pay, or other special compensation between the date of the general election immediately preceding the expiration of the official's term and the date that the official's term expires.

(2) (a) An employee who terminates employment is entitled to receive only:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal

1 dispute, claim, grievance, contested case, or lawsuit; or

2 (c) any other payment authorized by law."

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4 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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6 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the
7 meaning of 1-2-109, to payments made by a statewide elected official to personal staff after November 4, 2008,
8 that were not made pursuant to the pay plan, pay schedule, or administrative procedures governing compensation
9 determination for personal staff and in effect on November 4, 2008.

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11 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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- END -

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HOUSE BILL NO. 576
INTRODUCED BY W. WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING BONUSES, PAYMENTS, AND CERTAIN PAY INCREASES FOR CERTAIN EXEMPT STATE EMPLOYEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Pay increase restriction.** An individual employed by the governor, the lieutenant governor, the attorney general, the secretary of state, the state auditor, or the superintendent of public instruction in an exempt position, as described in 2-18-103 or 2-18-104, may not receive a bonus, a monetary payment, or a salary increase, other than a statutorily prescribed increase provided for in 2-18-303, during the fiscal year in which the enumerated state officer is seeking reelection or election to another state office.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 3, and the provisions of Title 2, chapter 18, part 3, apply to [section 1].

- END -

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HOUSE BILL NO. 594
INTRODUCED BY C. HUNTER

A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE AMOUNT OF A BONUS PAYMENT TO ANY
STATE OFFICER OR STATE EMPLOYEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Bonus restrictions.** A state officer or state employee, including those
enumerated in 2-18-103, may not receive a bonus or any type of monetary payment, other than normal salary
or wages, that is in excess of \$1,000 during a fiscal year.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
integral part of Title 2, chapter 18, part 3, and the provisions of Title 2, chapter 18, part 3, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Monica Huyg, Legal Counsel



Deputy Legislative Auditors:
James Gillett
Angie Grove

MEMORANDUM

TO: Tori Hunthausen, Legislative Auditor

FROM: Angus Maciver, Senior Performance Auditor

DATE: February 18, 2009

RE: Information on employee incentive payments made by Montana State Fund
(Legislative Request # 2836)

The following summarizes information relating to incentive payments made to employees of Montana State Fund (MSF) during fiscal year 2009. MSF employees are eligible for participation in an incentive program, which provides an opportunity to earn a performance-based bonus on an annual basis. The most recent incentive payments made to MSF employees were paid during November and December of 2008 and were based on performance for the fiscal year 2008 financial reporting period. The following information relating to these payments was sourced from the SABHRS system:

- 257 MSF employees received incentive payments (approximately 86 percent of the workforce)
- Individual payments ranged from approximately \$700 to almost \$27,000
- Total incentive payments were \$978,756.66

Further queries of SABHRS did not identify any further incentive payments made to MSF employees since the November/December 2008 period.

There is a discrepancy between incentive payment data recently issued by MSF and the information sourced from SABHRS. The total calculated by MSF is lower by approximately \$5,800 as a result of one employee terminating and one employee dying during the processing of the incentive payments.

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